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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd December, 1957/Agrahayana 11, 1879 Saka

S.R.O. 3904.—Whereas the election of Shri Mukat Beharilal as a member of the Lok Sabha from the Ajmer Parliamentary constituency of that Sabha was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shri Durga Prasad, son of Shri Murli Dhar, C/o 'Daily Navajyoti', Kaiserganj, Ajmer;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has sent a copy of its order to the Commission;

Now, therefore, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, AJMER

ELECTION PETITION NO. 230 OF 1957

Shri Durga Pershad—*Petitioner.*

Vs.

1. Shri Mukat Beharilal Bhargava son of Shri Vinodilal Bhargava, Hathi Bhata, Ajmer.
2. Shri B. N. Bhargava Vakil, Hathi Bhata, Ajmer—*Respondents.*

Shri D. D. Bhargava *for Petitioner.*

Shri B. P. Beri *for respondents.*

ORDER

In this election petition, Shri Durga Pershad petitioner has challenged the election of Shri Mukat Behari Lal Bhargava, Respondent No. 1, who is a returned candidate to the House of People (Lok Sabha) from Ajmer Parliamentary Constituency, in the General Elections held in February-March 1957. Shri B. N. Bhargava, respondent No. 2 was the Election Agent of Respondent No. 1 during the election. Respondent No. 1 contested the election on the Congress ticket, and he was declared elected by the Returning Officer on

12th March, 1957, and the result was published in the Gazette of India Part II Section III, Extra-ordinary, dated 14th March, 1957. A number of preliminary objections against the maintainability of the election petition were taken by the respondents in their application dated 24th June, 1957, and this Tribunal after hearing both the parties, has passed its order dated 27th September, 1957, in respect of certain objections. The respondents also further filed preliminary objections *vide* their application dated 16th September, 1957, presented before the Tribunal on 18th September, 1957, in respect of paras 17 to 22 of the election petition, and some of these grounds were already taken by them in their previous application dated 24th June, 1957, and these objections were separately heard, as desired by both the parties. In para 3 of their previous application dated 24th June, 1957, the respondents raised the following objection:—

“That the petition does not disclose how the allegations contained in paras 17 to 22, even assuming the correctness of the same (which the respondents seriously dispute and will emphatically deny in due course and at the proper time, if necessary) for the sake of arguments constitute a corrupt practice as envisaged or defined by section 123 of the R.P. Act. The petitioner has not specifically mentioned the particular clause under which according to him the said allegations constitute a corrupt practice, and the respondents seriously dispute the soundness of the proposition that the allegations contained therein constitute any corrupt practice within the meaning of section 123 R.P. Act or by any stretch of language can possibly fall within the mischief of the aforesaid section.”

The main objections raised by the respondents in their further application dated 18th September, 1957 are as follows:—

1. “That the petitioner in paras 17 to 22 of the Election Petition has advanced allegations of a corrupt practice to which Respondent No. 1 and one Seth Sobhag Mal Lodha was a rival candidate and had announced his retirement from contest in consequence of the corrupt practice perpetrated by the Respondent No. 1 and Seth Sobhag Mal Lodha, referred to and relied upon in paras 18 to 22.
2. “That under the circumstances, it is quite clear that the petitioner has made allegations in respect to the commission of corrupt practice by the rival contesting candidate, Seth Sobhag Mal Lodha and as such said Seth Sobhag Mal Lodha must have been impleaded as a party to the Election Petition as enjoined by section 82 of the Representation of the People Act, 1951, as amended by Act 27 of 1956.
3. “That since Seth Sobhag Mal Lodha, who was a necessary party as required by section 82 of the Representation of the Peoples Act, 1951, has not been impleaded as a party, there can be no adjudication on merits in respect to the allegations contained in the petition.

It is, therefore, respectfully prayed that the Election Petition be dismissed and the Respondents be allowed compensatory costs.”

The respondents' learned counsel has seriously urged that the petitioner has made allegations of corrupt practice in paras 17 to 22 of the petition against Seth Sobhag Mal Lodha who had withdrawn in favour of respondent No. 1 and as such under section 82(b) of R.P. Act, Seth Sobhag Mal Lodha was a necessary party to the petition and his non-joinder entailed dismissal

of the petition. In order to properly appreciate the respondents' objections, it would be proper to reproduce the allegations contained in paras 17 to 22 of the petition:—

- "17. Seth Sobhag Mal Lodha of Civil Lines and Naya Bazar, Ajmer, was one of the candidates for Parliamentary election from this constituency, his nomination was accepted, and he started the canvassing in right earnest.
18. That the respondent No. 1 made several approaches personally as well as through influential persons to induce Seth Sobhag Mal Lodha to withdraw from the contest but found that his efforts were not successful.
19. That Shri Panch Hazari, a representative of the All India Congress Committee at the instance of respondent No. 1 and on behalf of Shri U. N. Dhebar then approached Shri Seth Sobhag Mal Lodha and on behalf of Shri U. N. Dhebar offered the nomination on behalf of the Congress for the seat of Rajya Sabha from Rajasthan to Seth Sobhag Mal Lodha. That he further assured that Shri U. N. Dhebar would confirm the said offer personally. That said Seth Sobhag Mal on the said inducement withdrew from the contest from Ajmer Parliamentary Constituency.
20. That Shri U. N. Dhebar in pursuance of the promise given by his representative Shri Panch Hazari, went to the residence of Seth Sobhag Mal Lodha, and confirmed the offer of nomination for Rajya Sabha seat on behalf of the Congress. That Shri U. N. Dhebar also dined at the residence of Seth Sobhag Mal Lodha.
21. That Seth Sobhag Mal Lodha was so much influenced by offer of the nomination for Rajya Sabha seat made to him, by the representative of Shri U. N. Dhebar, and personally confirmed by Shri U. N. Dhebar, that Seth Sobhag Mal Lodha gave a sum of Rs. 10,000 to Shri U. N. Dhebar by cheque drawn from the account of Mewar Textile Mills, Bhilwara.
22. That the aforesaid corrupt practice of inducing Seth Sobhag Mal Lodha, was done at the instance of the Respondent No. 1, by Shri Panch Hazari and Shri U. N. Dhebar."

Section 82 of R.P. Act relates to parties to the petition and reads as under:—

"A petitioner shall join as respondent to his petition—

- (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) Any other candidate against whom allegations of any corrupt practice are made in the petition."

The points that emerge for decision on the preliminary objections of the respondents dated 16th September, 1957 are as follows:—

1. Whether allegations of any corrupt practice against Seth Sobhag Mal Lodha are made in the petition and as such Seth Sobhag Mal Lodha was a necessary party to the petition under section 82 (b) of the R.P. Act?

2. If so, whether the non-joinder of Seth Sobhag Mal Lodha entailed the dismissal of the petition under section 90 (b) of the R.P. Act?

Under section 123 R.P. Act, corrupt practices have been enumerated and the following are deemed to be corrupt practices for the purposes of this Act:—

- (1) "Bribery, that is to say, any gift, offer or promise by a candidate or his agent or by any other person, of any gratification to any person whomsoever, with the object, directly or indirectly of inducing—
 - (a) a person to stand or not to stand as, or to withdraw from being a candidate, or to retire from contest, at an election;
 - (b) an elector to vote or refrain from voting at an election. or as a reward to—
 - (i) a person for having stood or not stood, or for having withdrawn his candidature, or for having retired from contest; or
 - (ii) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this clause, the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78."

Under the definition of bribery as given in R.P. Act, any gift, offer or promise by a candidate or his agent or by any other person, of any gratification to any person whomsoever, with the object, directly or indirectly of inducing a candidate to retire from contest in an election, is an instance of corrupt practice and the similar offer or promise by a candidate or his agent to any person whomsoever as a reward to a person for having withdrawn his candidature or for having retired from the contest is also an instance of corrupt practice.

This Tribunal has now to determine whether the allegations contained in paras 17 to 22 amount to corrupt practices under the definition given in R.P. Act. It has been contended by petitioner's learned counsel that Seth Sobhag Mal Lodha had not committed any corrupt practice at all, although he might be the victim of the corrupt practices committed on behalf of Respondent No. 1.

Para 17 states that Seth Sobhag Mal Lodha was one of the candidates for Parliamentary election from the Ajmer constituency and his nomination was accepted and he started the canvassing in right earnest. Para 18 states that the Respondent No. 1 made several approaches to Seth Sobhag Mal Lodha personally and through influential persons to withdraw from the contest. Para 19 states that Shri Panch Hazari, a representative of the A.I.C.C. at the instance of Respondent No. 1 and on behalf of Shri U. N. Dhebar, approached Seth Sobhag Mal Lodha and offered the nomination on behalf of the Congress for the seat of Rajya Sabha from Rajasthan to Seth Sobhag Mal Lodha.

Paras 18 and 19 clearly relate to corrupt practices alleged to have been made by Respondent No. 1 or on his behalf by others. Para 20 states that Shri U. N. Dhebar in pursuance of the promise given by Shri Panch Hazari went to the residence of Seth Sobhag Mal Lodha and confirmed the offer of nomination for Rajya Sabha and that Shri U. N. Dhebar also dined at the

residence of Seth Sobhag Mal Lodha. Para 21 states that Seth Sobhag Mal Lodha was so much influenced by offer of the nomination for Rajya Sabha seat made to him by the representation of Shri U. N. Dhebar, that Seth Sobhag Mal Lodha gave a sum of Rs. 10,000 to Shri U. N. Dhebar by cheque drawn from the account of Mewar Textile Mills, Bhilwara. It has been argued by the respondents' learned counsel that this act of Seth Sobhag Mal, who was a rival candidate in election of offering a sum of Rs. 10,000 to Shri U. N. Dhebar was an instance of corrupt practice committed by Seth Sobhag Mal Lodha, while the contention of the petitioner's counsel is that a candidate who withdraws as a result of inducement does not commit any corrupt practice under section 123 R.P. Act.

Shri Nanak Chand and Shri Gyan Chand Mathur in their Law of Elections and Election Petitions in India, 2nd Edition, 1957, have given the following main distinguishing features between electoral bribery (*i.e.*, bribery under section 123 of the Representation of the People Act, 1951) and penal bribery (*i.e.*, bribery under section 171-B of the Penal Code):—

- (1) Electoral bribery is a corrupt practice under the Representation of the People Act, while penal bribery is an offence under the Penal Code.
- (2) Electoral bribery applies only to elections to Legislative bodies constituted under the Constitution of India, whereas the offence under the Indian Penal Code applies to all elections whatsoever, as defined in the Code itself.
- (3) Electoral bribery can entail only certain kinds of punishments, *viz.*, the avoiding of the elections and invalidating of votes or the disqualifications of these guilty of that bribery. In the case of penal bribery, however, the prosecution may be commenced as in the case of other ordinary offences under the Code of Criminal Procedure.
- (4) In electoral bribery under the Act only the giving and offering of gratification is bribery but in penal bribery acceptance of gratification is also bribery.

The petitioner's learned counsel has argued that the respondents in their two applications, one dated 24th June, 1957, regarding paras 17 to 22 have taken the stand that the allegations contained therein do not constitute any corrupt practice within the meaning of section 123 R.P. Act, while in their later application dated 16th September, 1957, have stated that paras 17 to 22 of the petition contained allegations of corrupt practice both on behalf of respondent No. 1 and the rival contesting candidate Seth Sobhag Mal Lodha, so the latter must have been impleaded as a party to the election petition as enjoined by section 82 of R.P. Act. It appears that the respondents have taken in their later application a different stand from what they had taken in their previous application, but as Section 82 of R.P. Act is mandatory, this Tribunal has to determine whether the allegations of any corrupt practice are made in the petition against Seth Sobhag Mal Lodha, who was a contesting candidate, with respondent No. 1 in the election to the House of People (Lok Sabha) in the same Ajmer Parliamentary Constituency. The definition of a "candidate" as given in Section 79 (b) R.P. Act means "a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate". The allegations as contained in para 17 of the petition clearly states that Seth Sobhag Mal Lodha was one of the candidates for Parliamentary Election from this Constituency and his nomination

was accepted and he started the canvassing in right earnest. Paras 18, 19 and 20 of the petition state that Seth Sobhag Mal Lodha was given temptation of Rajya Sabha seat from Rajasthan on behalf of the Congress in lieu of his retirement from the contest as a rival candidate of respondent No. 1 and that Seth Sobhag Mal Lodha on the said inducement actually withdrew from the Ajmer Parliamentary Constituency. These are some of the ingredients of corrupt practices as given in section 123(1) under head 'bribery' of R.P. Act. In para 21 of the petition, the allegations are that Seth Sobhag Mal Lodha was so much influenced by the offer of nomination of Rajya Sabha seat made to him, that Seth Sobhag Mal Lodha gave a sum of Rs. 10,000 to Shri U. N. Dhebar by cheque drawn from the account of Mewar Textile Mills, Bhilwara. These are clear allegations of corrupt practice made against Seth Sobhag Mal Lodha inasmuch as he is alleged to have given a sum of Rs. 10,000 for his nomination to the Rajya Sabha seat. No doubt, this might be an offer for a seat in future elections. Shri Nanak Chand and Shri Gyan Chand Mathur in their law of Elections at page 232 have stated that an offer of seat in Town council is a bribe and that a mere promise of payment itself amounts to a corrupt practice. In the present petition, the allegations against Seth Sobhag Mal Lodha are that he had actually paid a sum of Rs. 10,000 by drawing a cheque for his nomination for Rajya Sabha seat. The allegations made against Seth Sobhag Mal Lodha cannot be enquired into in his absence unless Seth Sobhag Mal Lodha was made a party to the present petition. It is a well established proposition of law that no body can be condemned unheard when the allegations of any corrupt practice were made against him. In the election petition case against Chowdhry Charan Singh before the Election Tribunal consisting of Shri R. K. Banerjee, the specific case of the respondent was that Sardar Dalip Singh was a duly nominated candidate who had withdrawn and that as corrupt practices were attributed to him in the petition, the petitioner was bound to make him a party and his failure must result in the dismissal of the entire petition in limine. In that case, it was stated in the application of the respondent that the mandatory provisions of section 82 R.P. Act had been violated inasmuch as Sardar Dalip Singh was not made a party to the election petition according to section 82(b) of the R.P. Act. It was recited that it was now obligatory on the Tribunal to dismiss the petition under section 90(3). The Tribunal after hearing arguments held that Sardar Dalip Singh was a necessary party and as he was not impleaded, the whole petition was liable to dismissal.

In the present petition, allegations of corrupt practice have been made against Seth Sobhag Mal Lodha in paras 17 to 22 and as such keeping the provisions of section 82(b) of R.P. Act, Seth Sobhag Mal Lodha was a necessary party to the petition. Point No. 1 is accordingly answered.

Coming to point No. 2, it has been admitted by the petitioner's learned counsel that section 82 R.P. Act is a mandatory provision of law. Sub-section 3 of section 90 is as under:—

"The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85."

Under this section, the Tribunal is bound to dismiss an election petition, if there is non-compliance with the provisions of section 82. The discretion given to the Tribunal under the corresponding section 90 of the Act prior to the amendment by Act XXVII of 1956 has been taken away and the Tribunal is now left with no discretion but to dismiss the petition. The Tribunal has no power to give time to the petitioner for making Seth Sobhag

Mal Lodha as a party to the petition. It has been held by the Hon'ble Supreme Court of India in *Jagan Nath vs. Jaswant Singh & others* reported in IX E.L.R. 231 that:—

“The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power.”

“It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law”.

This Tribunal, therefore, holds that as Seth Sobhag Mal Lodha was a necessary party under section 82 (b) of R.P. Act and as he has not been made a party within the prescribed time, the election petition must be dismissed under section 90 (3) R.P. Act.

Hence it is ordered that the election petition of Shri Durga Pershad is dismissed under section 90 (3) of R.P. Act for non-compliance of section 82 (b) of the Act. The petitioner is to pay Rs. 100 as costs to the respondents.

The 12th November, 1957.

(Sd.) KISHANLAL,

Election Tribunal, Ajmer.

Pronounced in open court.

(Sd.) KISHANLAL,

The 12th November, 1957.

Election Tribunal, Ajmer.

[No. 82/230/57/12792.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

